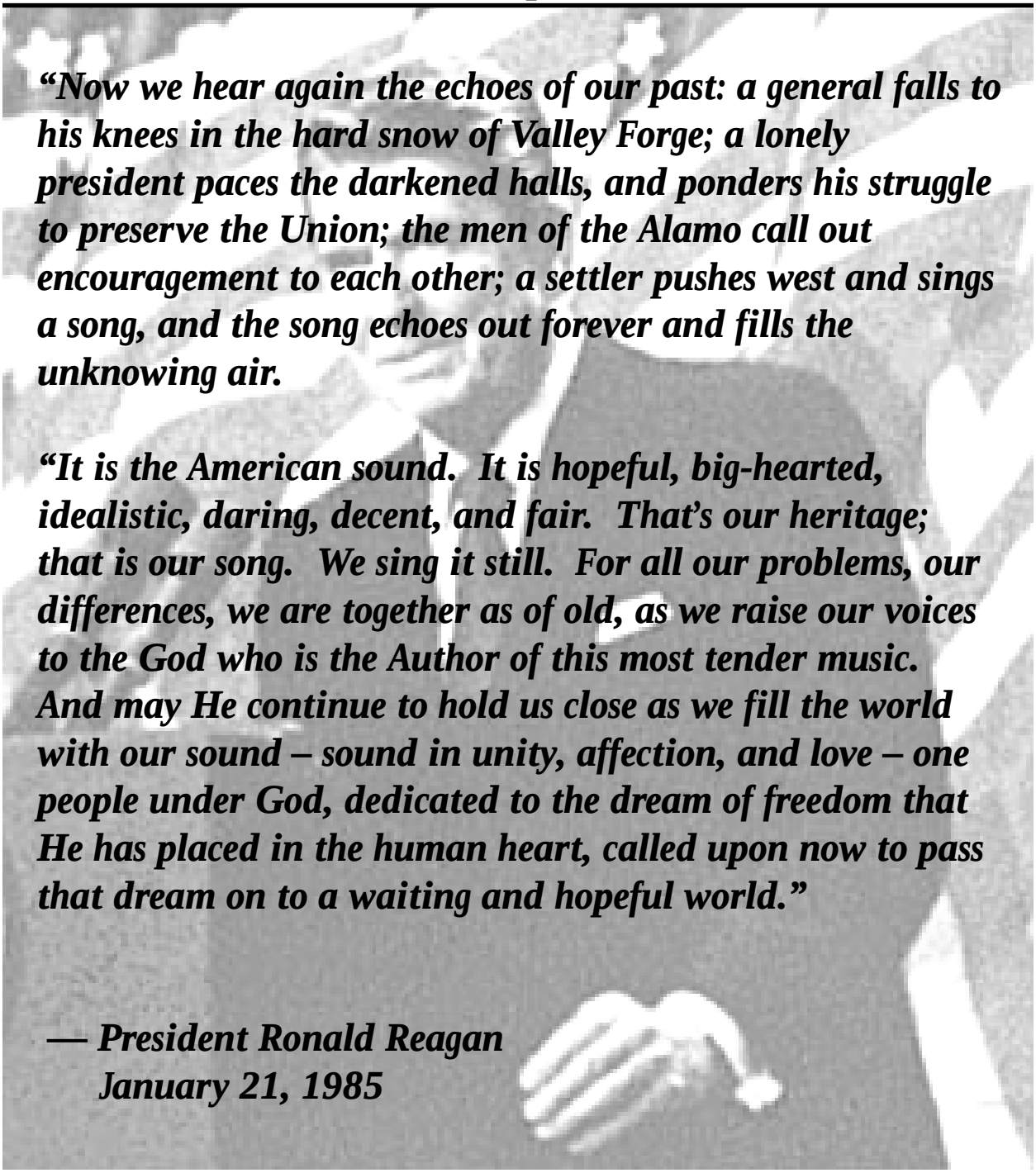
The

American Sound

A Journal of Republican Ideas



"Now we hear again the echoes of our past: a general falls to his knees in the hard snow of Valley Forge; a lonely president paces the darkened halls, and ponders his struggle to preserve the Union; the men of the Alamo call out encouragement to each other; a settler pushes west and sings a song, and the song echoes out forever and fills the unknowing air.

"It is the American sound. It is hopeful, big-hearted, idealistic, daring, decent, and fair. That's our heritage; that is our song. We sing it still. For all our problems, our differences, we are together as of old, as we raise our voices to the God who is the Author of this most tender music. And may He continue to hold us close as we fill the world with our sound – sound in unity, affection, and love – one people under God, dedicated to the dream of freedom that He has placed in the human heart, called upon now to pass that dream on to a waiting and hopeful world."

— President Ronald Reagan
January 21, 1985

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THE REGULATORY STATE OF THE UNION

By Reps. John Boehner and James Talent

More than 200 years after the founding of the Republic, government regulations now pervade every aspect of American life. The era of limited government is a distant memory, consigned to text books as a long lost period in American history. Today, whether people are engaged in business activity, food safety, environmental concerns, or charitable work, there's a regulation they have to comply with. And the regulatory burden just keeps on growing.

It is now estimated that the cost of complying with government regulations is more than $700 billion every year. The direct result is restrained small business formation, retarded economic growth, fewer jobs, and higher costs for consumers. The indirect effect of regulation is to discourage the entrepreneurs and community activists who are the backbone of America.

For instance, Project 21, an African-American leadership group, recently surveyed 441 charities serving low-income communities and found that nearly 90 percent reported that government regulations impede their ability to help people in need. As Carmen Bermudes of the Upper Bronx Neighborhood Association for Puerto Rican Affairs in New York City put it: "Because of [government] regulations that govern the eligibility of the youth, we have had to turn away 30 percent of the youth that are attracted to our program."

The last 50 years, and the last quarter of a century in particular, have seen the rise of what can be referred to as the "regulatory state," with activist agencies often exceeding Congress's intent when it passed a law. The number of pages in the *Federal Register* has grown astronomically, with thousands of new rules and regulations being churned out every year. And more often than not, the regulations created by the federal government are unworkable, overly burdensome, exceedingly expensive to implement, and ignorant of practical realities.

So what is Congress to do? The answer, quite simply, is fight back.

In 1996, the Republican Congress passed an important law known as the Congressional Review Act (CRA). In his article that follows, Rep. David McIntosh calls the CRA "the most significant change in regulatory law" in 50 years. What does this obscure law do? In short, it reasserts Congress's authority over lawmaking, providing Congress with a mechanism to strike down virtually any new rule or regulation. In Rep. McIntosh's words, the CRA empowers Congress to "roll back rogue regulations, rein in unruly regulators, and restore political accountability to the rulemaking process."

Rep. Sue Kelly continues this discussion with an article detailing the need for Congress to take a more

active role in the regulatory process. She advocates establishing a Congressional Office of Regulatory Analysis to provide Congress with information about the impact of proposed regulations. Without this source of non-partisan information, she argues, Congress remains at the mercy of regulatory agencies, who have no interest in providing realistic information that might prove harmful to their proposed rules.

In his article, Rep. Robert Aderholt discusses the underlying problem of the science behind many of the new rules and regulations. He notes that scientists conducting research with federal money are often not required to make their data available to the public. Rep. Aderholt argues that this corrupts the rulemaking process as new rules and regulations are based on faulty or questionable science that may or may not have been reviewed by other scientists.

The final two articles are essentially case studies of two of today's most significant regulatory issues. Rep. Jo Ann Emerson discusses the decisions made at the Kyoto Conference on Global Climate Change and Rep. Fred Upton discusses the EPA's proposed changes to the Clean Air Act standards.

Rep. Emerson attended the Kyoto Conference as a member of the Congressional Observer Delegation and witnessed firsthand the ideology driving the myth of global warming. In her article, she questions whether there is any scientific consensus regarding global warming and notes that even if there were, the Kyoto Accord is a misguided attempt to fix the perceived problem. As she notes: "The Kyoto Accord is a travesty for a variety of reasons. The entire premise underpinning its existence is based on questionable science. And the treaty itself will prove ineffective because it defies simple logic and basic economics."

Rep. Upton's article considers the EPA's proposal to change the ozone and particulate standards established by the Clean Air Act. He questions the science behind the EPA's decision and notes the dramatic impact the proposed new standards would have on the economy. His conclusion is telling: "[T]hese regulations are neither necessary nor wise."

As our nation continues the work of building a new economy for the dawning millennium, re-evaluating the role of regulations should be a significant priority. The Congressional Review Act provides the opportunity to strengthen the role of Congress in the development of new rules, and it should be used as aggressively and effectively as possible. Sound, peer-reviewed science should be the standard, and attempts to enact political goals through treaties and new regulations should be rejected outright. America's future is bright, but it will be brighter yet once we unshackle our society from the burden of the regulatory state.

THE CONGRESSIONAL REVIEW ACT: OUR MOST POWERFUL WEAPON AGAINST ROGUE REGULATIONS

By Rep. David McIntosh

When President Clinton signed the Congressional Review Act (CRA) into law in 1996, almost no one noticed. Little did the president know that the CRA, an obscure subtitle of the Small Business Regulatory Enforcement Fairness Act (SBREFA), was the most significant change in regulatory law since the Administrative Procedure Act was passed 50 years earlier. By giving Congress the power to strike down virtually any new regulation, the CRA fundamentally altered the relationship between Congress and the federal regulatory agencies. Now the time is ripe for Congress to unleash the full power of the CRA against harmful, excessive, arbitrary, and just plain silly regulations.

The CRA requires agencies to submit a report to Congress on each new (final) rule and empowers Congress to strike down any reported rule through a simple Resolution of Disapproval — the legislative equivalent of the presidential line-item veto. Before the CRA, federal agencies had a virtual blank check to interpret, reinterpret, and, in some cases, ignore the words of their authorizing statutes.

Under Article I of the Constitution, "all legislative powers" belong to Congress alone. However, because Congress cannot always spell out or anticipate the many situations to which its laws will apply, it must draft laws in relatively general terms. To provide for full implementation of these general commands, Executive Branch agencies make rules, which are, in effect, "little laws" governing all the details.

The problem is that the devil is in the details. Agencies often reinterpret their statutory mandates to serve their own pet policy preferences, devising regulations that exceed or conflict with Congress's expectations, thereby usurping part of Congress's constitutional power to legislate. The CRA closes this unconstitutional gap in accountability between the Congress and the Executive Branch by giving Congress the opportunity to review and nullify inappropriate regulations.

Within Congress, the committees of jurisdiction are often in the best position to determine whether new rules run afoul of the legislative intentions and policy judgments of Congress on technical matters. Accordingly, the CRA gives both individual Members and committee chairmen a powerful trump card in dealing with bureaucrats who have abused or overreached their statutory authority. By supporting Resolutions of Disapproval on regulations a committee deems ill-considered or inappropriate, the committee can strengthen its oversight jurisdiction over wayward regulators.

The CRA is also a valuable resource to individual Members who hear almost daily from citizens and

small businesses in their districts who have felt the sting of regulatory actions: fines, surprise inspections, shutdowns, new forms to fill out, and red tape of all descriptions. The CRA gives Members a number of options for easing their constituents' regulatory burden.

More specifically, the CRA provides a mechanism to stop inappropriate regulations in three ways.

Direct Disapproval

The most direct and effective weapon against renegade rules is the Joint Resolution of Disapproval. Any Member may introduce a Resolution of Disapproval, which is then referred to the committee of jurisdiction in each House. Every Resolution of Disapproval is drafted according to a standard, fill-in-the blank format: "That Congress disapproves the rule submitted by the [name of agency] relating to [subject of rule], and such rule shall have no force or effect."

In the long run, the success of the CRA will be measured more by how few disapproval resolutions are introduced, rather than how many rules are actually nullified.

All final (including "interim final") rules issued since June 25, 1997 are still subject to a Resolution of Disapproval, and will remain vulnerable until at least mid-May, in accordance with the CRA's generous timing provisions. That is, the CRA treats all rules issued during the last 60 legislative days of the previous session as if they were issued on the 15th legislative day of the current session, and then allows another 60 calendar days (plus periods in which Congress is out of session for more than three days) to introduce Resolutions of Disapproval.

Deterrence

When a potentially burdensome rule is still in the proposal stage, the availability of the Resolution of Disapproval can serve as a bargaining chip to insure that the final rule does not go beyond Congress's intent. In the long run, the success of the CRA will be measured more by how few disapproval resolutions are introduced, rather than by how many rules are actually nullified. If Congress clearly demonstrates its willingness to use the CRA, the agencies will be forced to think twice before issuing far-fetched, burdensome, excessive, or duplicative rules. In the meantime, however, in order for the CRA to function as a credible deterrent, its disapproval procedures must be regularly publicized, considered, and used.

Exposing Unreported Rules

Before a rule covered by the CRA can take effect it must be reported to Congress. If an agency starts implementing or enforcing a rule without first reporting it, that agency is breaking the law. The CRA's definition of a covered "rule" is extremely broad, covering all agency statements of general applicability and future effect, including notice-and-comment rules, interpretive rules, policy statements, enforcement guidelines, staff manuals, and other formats.

Nevertheless, since the CRA took effect in March 1996, agencies have ignored or flaunted the reporting requirements in countless instances, issuing policy statements, enforcement guidelines, and even "verbal guidances" (i.e., phone calls out of the blue) without first reporting them. The General Accounting Office (GAO) recently calculated that more than 300 rules have not been reported in compliance with the CRA — and these were only the rules that made it

into the *Federal Register.* All of these rules, not to mention all of the "verbal guidances" and other rules that were not published in the *Federal Register*, are being enforced illegally! Under the CRA, they have no legal force or effect.

In many cases, the agencies seem to be unaware that they are violating the law.

In many cases, the agencies seem to be unaware that they are violating the law. The White House Office of Information and Regulatory Affairs (OIRA), which has traditionally provided guidance to the agencies on regulatory compliance issues, has virtually ignored its legal and institutional responsibility to coordinate agency compliance with the CRA. Meanwhile, the agencies are left guessing as to how and when to comply. As a result, Congress is not getting all of the information it needs to implement the CRA review process fully.

The House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is currently working on establishing an infrastructure to fully implement the CRA. In the meantime, Congress must rely on the troops on the ground to spot instances of regulations "flying under the radar."

Constituent complaints can serve as an early warning system for spurious rules. If a Member hears that an agency is enforcing a new rule against a constituent, he or she should first contact GAO or the appropriate regulatory oversight committee to determine: (1) Was the rule or action issued after March 29, 1996 (the date the CRA went into effect)? (2) Does the rule fall within the CRA's broad definition of a rule? and (3) Did the agency fail to report the rule?

If it is a rule, but has not been reported, it is a renegade rule. In this case, the Member should warn the agency that it is violating the law and must stop enforcing the rule immediately until all applicable laws and procedures are complied with, including the CRA. The agency's reaction may be one of confusion, shock, or denial.

In brief, through bold use of the Resolution of Disapproval and vigorous oversight of the CRA's rule reporting process, Congress can roll back rogue regulations, rein in unruly regulators, and restore political accountability to the rulemaking process. In defense of the citizens and small businesses that bear the brunt of arbitrary and irresponsible regulations, Congress must not shrink from using the most powerful weapon in its oversight arsenal — the Congressional Review Act.

...through bold use of the Resolution of Disapproval and vigorous oversight of the CRA's rule reporting process, Congress can roll back rogue regulations, rein in unruly regulators, and restore political accountability to the rulemaking process.

Rep. David McIntosh of Indiana was first elected to the House in 1994. He is the chairman of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. During the administration of President George Bush, he directed Vice President Dan Quayle's Council on Competitiveness.

GIVING CONGRESS THE TOOLS TO REIN IN THE REGULATORY STATE

By Rep. Sue Kelly

Two years ago this March, Congress passed an important law known as the Small Business Regulatory Enforcement Fairness Act (*SBREFA*). This legislation was an attempt to foster a more cooperative and less threatening environment between regulatory agencies and small businesses. Specifically, it requires agencies to give greater consideration to the impact their decisions will have on small businesses. At the same time, it provides small businesses with stronger avenues of relief from agencies that are overzealous or unfair when enforcing their regulations.

Contained in the SBREFA is a provision known as the Congressional Review Act (CRA). This oversight tool provides Congress with a mechanism to review new regulations and to prevent those which are either too burdensome or simply inconsistent with congressional intent from taking effect (See related article by Rep. David McIntosh on page 5).

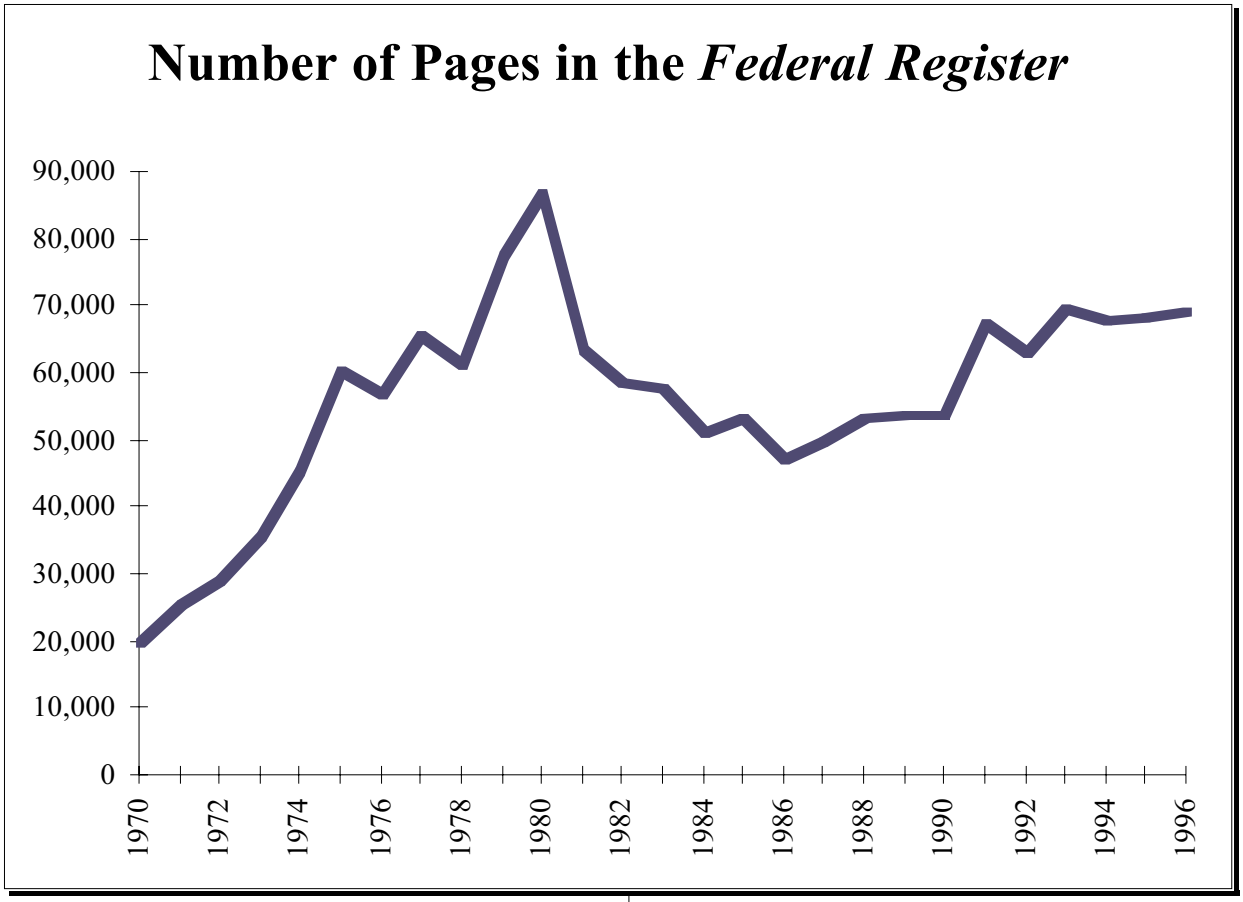
After two years of implementation, indications are that SBREFA is having several beneficial effects. For instance, businesses are beginning to take advantage of the fact that agency actions now fall under the auspices of judicial review. And the initial feedback from small businesses about the regulatory fairness program instituted by SBREFA is somewhat encouraging.

However, despite this progress, the executive branch continues to churn out expensive and burdensome new regulations at a virtually unchecked pace. During 1997, nearly 4,000 new rules were reported to the General Accounting Office (GAO) by federal agencies. And a review of the Unified Agenda of Federal Regulatory Actions printed in the *Federal Register* this past October reveals that there are more than 4,400 other rules currently under development.

Perhaps the crudest measure of regulatory activity — but nevertheless one of the most revealing — is the number of pages that appear each year in the *Federal Register*. During 1997, there were more than 68,000 pages of new rules and regulations printed in the *Federal Register*. In 1990, there were fewer than 55,000 pages (See chart on page 9).

The level of regulatory activity in the Executive Branch is important for one simple reason: regulations always come with costs, and the cumulative price tag isn't small. Last fall, the Clinton administration's Office of Management and Budget (OMB) issued a report estimating the total annual cost of regulation for 1997 at $280 billion (*1996 dollars*). That's the low-end of the various estimates, with other studies finding much higher costs. For instance, one study conducted in August 1996 by economist Thomas D. Hopkins of the Rochester Institute of Technology estimated that the annual total cost to comply with regulations in 1995 was $668 billion.

Whether it costs $280 billion, $668 billion, something in between, or something more, it is clear that federal regulations place a tremendous burden



on the U.S. economy. And unfortunately, it is often small business owners – the driving force of our economy – who disproportionately bear this costly burden. One recent study commissioned by the U.S. Small Business Administration found that the average small firm (fewer than 20 employees) spent more than $5,500 per employee to comply with federal regulations. In contrast, firms with 500 or more employees spent less than $3,000 per employee.

In an effort to get Congress to be more aggressive in policing agency regulations, several House Members — Reps. Dave McIntosh (R-IN) and George Gekas (R-PA) among the most notable – have joined me in working to identify immediate uses for the CRA, which unfortunately, to date, has not been used effectively. But there is also a need for a long-term approach. The regulatory state did not blossom over night, nor will it be restrained or fundamentally reoriented in a single year.

In the long term, what is needed is a new relationship between Congress and the agencies responsible for writing the regulations that apply the laws. The CRA can be the vehicle that helps alter the landscape. Now it is important that Congress has the tools to rein in the regulatory state.

One possibility to accomplish this goal is to establish a Congressional Office of Regulatory Analysis (CORA). Such an office would operate as a resource to support the information needs of Members of Congress. Its main function would be to conduct regulatory impact analyses of new regulations.

A large part of the current problem with regulations, and a large reason that the CRA has not yet been used effectively, is that most of Congress's information on regulations comes from agencies, which have a vested interest in downplaying the negative impact of any regulation they propose. CORA would

be able to provide a non-partisan second opinion on agency actions, helping Members determine the actual impact the regulation would have on the economy and assisting them in determining whether action under the CRA should be taken.

This relatively minor action of establishing CORA would go a long way towards improving the regulatory process. It would certainly allow Congress to make more informed decisions about whether a regulation is needed. And of equal importance, it would encourage agencies to improve the quality of their own analyses because they would have an incentive to ensure their work is accurate.

One recent study commissioned by the U.S. Small Business Administration found that the average small firm (fewer than 20 employees) spent more than $5,500 per employee to comply with federal regulations. In contrast, firms with 500 or more employees spent less than $3,000 per employee.

Additionally, recent experience has shown that these types of "second opinions" would provide a valuable contribution to public debate. Regulatory agencies are already required to complete any number of analyses under current laws and executive orders. For instance, the Regulatory Flexibility Act requires an analysis for rules that will have a "significant impact on a substantial number of small entities." Executive Order 12866 requires a cost-benefit analysis for regulations deemed by the promulgating agency as "economically significant." The Unfunded Mandates Reform Act requires a written statement by the promulgating agency for rules that include "any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any 1 year."

However, a problem exists because agencies often ignore these requirements, or fail to thoroughly and honestly comply with them. And regardless of what an agency may or may not do, there is no non-partisan source of information that Congress can rely upon. The GAO was given new reporting requirements under the CRA, but these reports are simply procedural and lack substance. They are only a checklist of what the promulgating agency may or may not have done. They provide very little information that would help Congress make informed decisions about the quality or the economic impact of the regulation.

In the long term, what is needed is a new relationship between Congress and the agencies that apply the laws. The CRA can be the vehicle that helps alter the landscape. Now it is important that Congress has the tools to rein in the regulatory state.

This is the information gap an office like CORA could rectify. CORA's analyses would include a procedural checklist of what the promulgating agency has done (or omitted), just as GAO currently does, but would also provide a more substantive analysis about the potential impact that the regulation would

have. This would shift the current reliance on information that is generated by the Executive Branch, which is unlikely to provide anything that might undermine the goals of a particular agency, to information that a non-partisan arm of Congress produces.

A useful analogy can be found in the Congressional Budget Office (CBO). CBO has come to be a respected source of information about the budget process for the legislative branch. When it comes to the regulatory side of the equation, however, Congress does not have similar expertise.

Compared to the bloated regulatory apparatus of the Executive Branch, Congress has virtually no resources with which to monitor the regulations that are being promulgated. Consider a recent study by the Center for the Study of American Business. Based on the *Budget of the United States Government* submitted by the President for fiscal year 1998, it is estimated that administering the federal regulatory establishment will cost $17.2 billion in 1998. Federal employees creating and enforcing regulations will number 126,000 in 1998, a slight increase from the 1997 numbers. If Congress wants to regain some accountability over the regulatory process, it needs a level of expertise in order to compete with the lopsided allocation of resources that now exists.

There are also a variety of potential additional applications for an office like CORA. As a repository of regulatory information, such an office would be ideally suited to provide a reliable assessment of the cost of complying with federal regulations. Regulatory reformers have consistently expressed the need for some type of regulatory accounting system or regulatory budget. Generally, under this type of system, a cap on compliance costs for each agency would be established. If an agency wanted to propose a new regulation that exceeded the compliance cost cap, it would have to find a corresponding offset from existing regulations in order to pay for it. This would force agencies to establish and follow their stated regulatory priorities, and therefore help control the size and scope of our nation's regulatory burden.

A large part of the current problem with regulations, and a large reason that the CRA has not been used effectively, is that most of Congress's information on regulations comes from agencies, which have a vested interest in downplaying the negative impact of any regulation they propose.

Everyone agrees on the need for a clean environment, safe workplaces, and a secure food supply. And laws are passed to ensure these priorities. It is important, however, to make sure that these laws are implemented in the most rational, cost effective, and least intrusive manner. Unfortunately, the current system of regulatory promulgation does not make the necessary information easily available. And when it is available, experience has shown us that it is often suspect. A Congressional Office of Regulatory Analysis would help bridge the credibility gap that often exists in the current regulatory system, giving Congress the tools to rein in the costly and bureaucratic regulatory state.

Rep. Sue Kelly of New York is serving her second term in the House. She is a member of the House Small Business Committee and the author of H.R. 1704, the Congressional Office of Regulatory Analysis Creation Act of 1997.

GOVERNMENT-FUNDED RESEARCH AND THE PUBLIC'S RIGHT TO KNOW

By Rep. Robert Aderholt

In the late 1980s, two researchers from the University of Utah claimed to have developed a process resulting in "cold fusion", a potentially limitless source of energy. But once their work was reviewed by other scientists, it was determined that, in fact, the process didn't hold up and cold fusion remained an illusive dream, the basis for Hollywood movies.

This illustrates one of the fundamental principles of scientific research – nothing is accepted until the data and conclusions drawn from that data have been reviewed and duplicated by peers, thus proving the research was not faulty or that the result or achievement was not a fluke.

Despite this important principle, researchers in the United States are routinely allowed to conduct research using federal funds while under no obligation to make the resulting data available to the public for review and independent analysis. This is true even when the data is used to support decisions on regulatory programs costing billions of dollars.

This lack of a clear policy requiring access to data has resulted in untold lost research opportunities, regulations and rules based on questionable scientific conclusions, and a deepening of the general public skepticism of government. Indeed, according to a recent Roper poll, a full 70 percent of the public doubts that data from government research is made available on a routine basis.

In a wide variety of issues, the Republican Congress has shown a commitment that "sunshine" is the best policy, committing to openness in the operations of the federal government and Congress in particular. Nowhere is the need to "let the sun shine in" more evident than with regard to scientific research, especially when such research is used as the basis for regulatory action. This is a view that enjoys wide support in the scientific community.

A little more than a year ago, the American scientific system, which generally promotes innovation and discovery, was under serious threat from a proposed international treaty that would have limited researchers' ability to access research data, the seeds of discovery. In October 1996, the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine joined forces in a last minute effort to challenge the Clinton administration's support for a draft treaty proposed by the World Intellectual Property Organization (WIPO). This treaty would have restricted the use of publicly and privately collected research data.

In a joint letter to senior White House officials, the leaders of each of these scientific organizations pointed out the obvious:

> "[T]he proposed changes are broadly antithetical to the principle of full and open exchange of scien-

tific data espoused by the U.S. government and academic science communities, and promoted internationally."

They also expressed disappointment that the changes were proposed by the Department of Commerce without any debate or analysis of the implications for the nation's scientific and technological development. In the end, the Clinton administration was forced to change its position and eventually opposed the treaty, which was ultimately rejected by WIPO.

The lack of an administration policy that requires the exchange of data is all the more troubling given the long standing support for full data disclosure by our most prominent research institutions, such as the National Academy of Sciences.

The lack of an administration policy that requires the exchange of data is all the more troubling given the long standing support for full data disclosure by our most prominent research institutions, such as National Academy of Sciences. In a 1985 report, entitled *Sharing Research Data*, the National Research Council (an arm of the National Academy of Sciences) stated in clear terms the benefits of sharing data, including:

- Reinforcement of the ideal of open scientific inquiry: Disputes among scientists are common and an important part of scientific inquiry. If the data is not available, scientific understanding and progress will be impaired.

- Verification, Refutation, or Refinement of Original Results: Reanalysis of data can identify errors and inconsistencies in the data that may alter the results. History is full of examples where a reanalysis of the data has significantly altered a study's conclusion.

- Promotion of New Research Through Existing Data: Data sharing allows researchers to compare research findings on different data sets and to form larger data bases that allow for the testing of new theories.

- Encouraging More Appropriate Use of Empirical Data in Policy Formulation: Sharing data will help to prevent policies from being based on errors because of the expectations of the agency or program conducting the research. Independent reanalysis of the data should be common place when important public policies are at stake.

The report recommends that investigators share their data at the time of publication and that any

data relevant to public policy should be shared as quickly and widely as possible. This is simply not happening today, and the unfortunate result is that politics, rather than science, often guides important policy decisions.

These same recommendations were echoed in a more recent report by the National Research Council — *Bits of Power* — published last year. Recognizing advances in information technology that allow scientists unprecedented abilities to collect, store, and share data, the Council recommended that the full and open exchange of data should be the overarching principle in the management and exchange of scientific information. Specifically, the Council noted:

> *"The value of data lies in their use. Full and open access to scientific data should be adopted as the international norm for the exchange of scientific data derived from public-funded research*." (Emphasis in the original)

The report recommends that...any data relevant to public policy should be shared as quickly and widely as possible. This is simply not happening today, and the unfortunate result is that politics, rather than science, often guides important policy decisions.

Notwithstanding these clear recommendations from our most preeminent scientific organizations, the federal government continues to fall short of these basic principles. As of today, the federal government does not have a standardized process for making research data available for independent review. In many instances, the public is not even assured that the data has been independently reviewed to verify the original results and correct for errors.

It is time to develop a national policy to provide both the public and scientific researchers access to federal research data while at the same time ensuring the appropriate safeguards for privacy, confidential business information, national security and law enforcement, and the proprietary interests of the researcher. This principle is especially important when the scientific research is used to support new rules and regulations. Otherwise, the risk that costly and burdensome regulations will be propped up by "junk science" is simply too great. Such a policy will in the end raise the standard of scientific research in this country and establish a precedent for the rest of the world to follow.

Most importantly, this will also represent an important step in regaining the public's trust that policies formed in Washington are the result of an open process with meaningful opportunities for the public to participate. This is the type of common-sense policy the American public supports and it is long overdue.

Rep. Robert Aderholt of Alabama is serving his first term in the House. He is the author of an amendment introduced in the Appropriations Committee during the past year designed to establish a national policy to ensure public access to research data created with the use of public funding. He is currently working on another legislative initiative to develop a standardized government-wide process for making federally funded research data available for independent review and analysis.

THE KYOTO CONFERENCE: A MELTING POT OF QUESTIONS

By Rep. Jo Ann Emerson

Last December, the United Nations held an international conference on global climate change in Kyoto, Japan. The purpose was to hammer out an agreement designed to combat "global warming." In the end, after much negotiating and an appearance by Vice President Al Gore intended to spur the talks, an historic accord was reached.

But in the effort to make history, the negotiating team put together by President Clinton may have very well written our ticket to economic disparity. Although perhaps well-intentioned, the Clinton administration negotiators in Kyoto did little to ensure the environmental or economic future of the United States. As a result, there are several alarming concerns about this treaty. Among the problems are: the scientific question of whether global warming actually exists; the economic consequences and depletion of the United States' global competitiveness as a result of provisions in the treaty; and the general erosion of our national sovereignty inherent in the process that resulted in this treaty.

Scientific Reliability

Is there such a thing as global warming caused by human activity on Earth? This is the fundamental question that was ignored in Kyoto. The existence of global warming was considered a given, and the conference was designed to develop a solution to that assumed crisis.

In truth, there is no scientific consensus that the Earth's temperature is rising due to anything but natural causes. In fact, some scientific studies indicate that the Earth's temperature has actually decreased slightly. Simply put, before we come up with a remedy, we need to first determine if we are actually ill.

To bolster their case, President Clinton and Vice President Gore often cite a letter signed by "more than 2,600 scientists" attesting to the "fact" of global warming. This is a reference to the "Scientists' Statement on Global Climatic Disruption" released by Ozone Action, a Washington-based special interest group. But, as Citizens for a Sound Economy (CSE), a free-market think tank, has discovered, "the disciplines of the scientists signatories are conspicuously absent" from the Ozone Action release. There is a reason for this.

By researching the background of more than two-thirds of the 2,600 scientists who signed this statement, CSE was able to identify only one climatologist. Indeed, less than 11 percent of the scientists were from fields connected to climate science. In contrast, 25 mathematicians signed the statement, as well as 49 medical doctors, 10 psychologists, one expert in tourism, one in traditional Chinese medicine, one in philosophy, four in veterinary science, nine pathologists, and one OB-GYN (See Chart on Page

17). The Ozone Action statement appears to have a lot more to do with politics and very little to do with scientific fact.

In the 1970s, there were so-called "experts" warning that a new ice age was imminent. Now, some of those same experts are telling us that the world is melting like an ice-cream cone on a hot summer day. The simple fact is that there is not conclusive scientific evidence that humans are causing any discernible increase in Earth's temperature.

Additionally, scientists do not even agree whether a slight increase in the planet's temperature would be a disaster or a beneficial occurrence. Nor is there any consensus that if there is a problem, it is something that can be solved through human intervention. Until there is a more definitive understanding and knowledge of global climate change, we should be wary about schemes such as the one outlined in Kyoto.

Economic and Competitiveness Factors

Aside from the fact that the entire premise behind this enormously significant treaty is based on what is at best questionable science, the treaty itself defies common sense. One of the most obvious problems is that the accord will only apply to a very select group of countries. Some of the world's largest nations are exempt from the treaty because they are considered "still developing." These "still developing" nations include India, China, Brazil, Mexico and Argentina, as well as rogue countries such as Iran and Cuba.

Astonishingly, of the 168 countries sending delegations to the conference, only 34 actually agreed to commit to the Kyoto Protocol. However, all of the countries attending the conference were given the opportunity to provide input into the treaty, effectively creating policies that will dramatically affect the future of the United States. Thus, while the United States would be hamstrung by the burdensome requirements of the Kyoto Protocol, most developing nations would be allowed to continue to pollute and produce by any means they determine.

Another disturbing outcome from Kyoto was the newly imposed reduction outlines for carbon emissions. Before the Conference, the United States had pledged to reduce its greenhouse gas emissions to the 1990 level despite the scientific question of global warming. That commitment was restated just two months before the Kyoto conference when the Clinton administration pledged that it would not agree to any attempt that would force the United States to reduce its emissions below the 1990 levels – a reduction of 28 percent.

In the 1970s, there were so-called "experts" warning that a new ice age was imminent. Now, some of those same experts are telling us that the world is melting like an ice-cream cone on a hot summer day. The simple fact is that there is not conclusive scientific evidence that humans are causing any discernible increase in Earth's temperature.

Unfortunately, during his last minute one-day, one-speech visit, Vive President Gore urged the U.S. delegates to use "increased negotiating flexibility." As a result, our delegates gave into pressure from other countries and put the U.S. on course for an agreement that forces the Untied States to cut its emis-

Just Who Are Ozone Action's 2,600 Scientists?

"More than 2,600 scientists have signed a letter about global climatic disruption…"

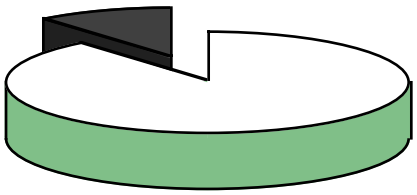
— Vice President Al Gore, July 28, 1997

"Why would you reject 2,500 scientists who have no interest in the outcome of this, who say we are in fact, putting too much pollution in the air. That pollution will warm the earth's climate. It has begun to happen and we will feel the consequences – irreversible consequences – if we fail to act. How can you walk away from 2,500 renowned scientists?

— Carol Browner, EPA Administrator, October 22, 1997 on CNN's Crossfire

Qualified To Comment on Global Warming?

From a Qualified Discipline 10.95%



From an Unqualified Discipline 89.05%

Citizens for a Sound Economy (CSE) researched and analyzed the background of 1,857 of the 2,611 scientists that signed Ozone Action's "Scientists' Statement on Global Climatic Disruption." CSE divided the scientists into "Qualified" and "Unqualified" disciplines. CSE defined a qualified scientific discipline as "one that specifically (as opposed to peripherally) addresses, or treats as the central object of its investigation: (1) climate or climatic phenomena; (2) the earth's climate as a system, rather than a series of disparate climatic events; (3) and the causal forces and factors behind climatic events." An unqualified scientific discipline was considered "one that does not specifically address, or treat as the central object of its investigation, climate or climatic phenomena, and the causal forces and factors behind them. The study, authored by Patrick Burns, can be found at http://www.cse.org

sions an additional seven percent below the 1990 levels. Thus, those three words — "increased negotiating flexibility"— meant that instead of 28 percent reductions, we committed to 35 percent reductions.

The negotiators and the administration hailed the Kyoto Agreement as "an historical first step." It is difficult to argue with this statement, since the economic costs to accomplish the significant emissions reductions will be astonishing. In fact, it will be virtually impossible to accomplish these reductions without dramatically raising the cost of energy. Whether directly through a 25 to 50 cent-a-gallon gas price increase or indirectly, by forcing our companies to buy expensive emission credits from Russia and Eastern Europe, those costs will be reflected in monthly energy bills.

The Kyoto Accord is a travesty for a variety of reasons. The entire premise underpinning its existence is based on questionable science. And the treaty itself will prove ineffective because it defies simple logic and basic economics.

American families will be forced to pay more for gas, heating oil, electricity, and manufactured goods — because as the cost to produce and provide energy increases, so will the price of goods and services. Furthermore, as these costs increase, cutbacks in employment become an unwelcome reality and increase the likelihood that, as many economists have stated, companies will move their operations – and their jobs — to countries like China, India, Brazil, and Mexico, all of which need not abide by the stringent requirements of the Kyoto Conference.

Some of the industries that stand to lose the most are the same industries that strengthen the U.S. economy at home through trade. For example, because so many in the agri-business industries depend on trade to move their products throughout the world, we stand to suffer severe losses in the world market. Under the guise of this treaty, many of the countries that are our biggest trade competitors will be allowed to enjoy both trade advantages and unlimited "pollution privileges" at the same time. The benefits bestowed overseas will further hinder U.S. businesses and their workers as our competitors, many of whom already engage in unfair trade practices, would see their costs of production become less expensive. Not only will they have the advantage of unfair trade practices, but they will also be able to turn around and offer their products at an even more competitive price.

National Sovereignty

Finally, as if concerns about questionable science and dire economic consequences didn't create reason enough to object, there remains the issue of national sovereignty. Just prior to the Kyoto Conference, the Department of Defense asked that any agreement exclude emissions produced by the armed forces. Our national defense, however, became part of the sacrificial lamb when the U.S. negotiators caved under pressure from countries like Iran, China and Russia. Our negotiators agreed to let a U.N. managed division oversee compliance of emission control standards. Now, those countries could require the U.S. to reduce our emissions abroad when training for military actions that are absolutely vital to the nation's defense. As a result, the U.S. may eventually have to

cut critical military training and operations in order to meet the emissions limits imposed by other countries.

The issue of national sovereignty also overlaps with the process of how this treaty was written. As previously noted, the Kyoto Agreement exempted the vast majority of the world's countries yet allowed them to help dictate the contents of the treaty. There is something inherently suspect when rule making and dictates from international organizations are substituted for cooperation and mutually-binding agreements that all countries can agree to adopt fot the benefit of all parties.

The Road Ahead

Whether you are from the agriculturally rich "Bootheel" of Southern Missouri, the seaside of California or the auto factory in Michigan, no one denies that we, as stewards of this Earth, have a responsibility to leave our environment better than we found it for our children and grandchildren. However, it is impossible to leave the world a better place if we don't have a uniform standard acceptable to every nation on the entire globe.

The Kyoto Accord is a travesty for a variety of reasons. The entire premise underpinning its existence is based on questionable science. And the treaty itself will prove ineffective because it defies simple logic and basic economics.

If the Kyoto Accord is ratified and implemented by the United States, American jobs will be exported to developing countries and the pollution that is produced will simply gain a new address. If the goal is to stop pollution, this treaty seems quite unrealistic. After all, it's not as though pollution produced in China affects only China — it affects the atmosphere of the entire world.

Additionally, it is a grave injustice that 134 countries were allowed to negotiate a treaty to which they will not be bound. Unless there is some sort of agreement on the table that binds all of the countries to the same rules and regulations, then the deal is not a good deal for the environment in America or for the environment of the entire world. Unity and compliance of all participants are essential for long-term global health.

Since the conclusion of the Kyoto Conference, President Clinton has stated his belief that the Senate is not likely to ratify the treaty in its present form. He is absolutely right. In fact, President Clinton has yet to officially sign the Kyoto treaty, and the administration has said that they will continue to work to persuade more developing nations like China, India, Brazil and Mexico to sign and agree to live by the provisions outlined in the Kyoto Agreement. The task is a lofty one. Chinese representatives in Kyoto said they would not even consider taking steps to "voluntarily" reduce their greenhouse gas emission until at least 2050. Interestingly enough, China is the country that will surpass the U.S. in the next five years as the leading producer of greenhouse gas emis-

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sions.

However, if this treaty is not presented to the Senate for ratification in the near future it does not necessarily mean the fight is complete. There is always the possibility of backdoor measures or new regulations designed to implement the unnecessary and overly-stringent emission controls.

The U.S. economy has enjoyed strong growth during the last several years. We haven't conquered every challenge, but at every level — local, state, and federal — there are people taking steps and making the sacrifices necessary to create jobs, stimulate new growth in industries across America and provide a sense of accomplishment. The cost to the U.S. economy and the cost to employment under the Kyoto Agreement is absolutely unacceptable. Therefore, we must ensure that no treaty is ever signed that exports both jobs and pollution, as well as economic stability for our children. We simply should not let a "deal at any cost," become our children's future.

Rep. Jo Ann Emerson of Missouri is serving her first term in the House. She attended the Kyoto Conference on Global Climate Change as a member of the Official Congressional Delegation.

CLEAN AIR, CLOUDY ISSUE

By Rep. Fred Upton

Threats to our environment, both perceived and real, are of great concern. The task of determining which problems will truly impact our environment is a difficult and costly game. Difficult because in today's world there are often many different, conflicting opinions. Costly because if the science is wrong, policy makers run the risk of writing rules that can cause permanent damage to our environment, our economy, or both.

Injecting politics into this debate compounds the problems. Government and business, Congress and the White House, Republicans and Democrats, state and federal officials have all, at one time or another, locked horns over which path toward environmental protection is the best to pursue. Sometimes, the results of scientific reviews are tailored to fit political needs. This does little but cloud the real debate and undermine the underlying objectives — a clean environment and an economic climate that supports job growth.

In a perfect world, the majority opinion of science would agree with the policy put in place. But unfortunately, our world is not perfect, and policy decisions often move forward regardless of whether all of the facts have been made clear. That is wrong. The Environmental Protection Agency's (EPA) 1996 proposals to tighten clean air standards for two specific pollutants — ozone and particulate matter – are a prime example of this problem.

The proposals to tighten these standards have been presented with the full force of the EPA. Carol Browner, the Administrator of the EPA, has called for these new standards in sworn testimony before Congress, in media interviews, and in her proposed policy initiatives. She claims to have no choice but to move forward because of the overwhelming preponderance of the scientific evidence calling for the new rules. In reality, the scientific record is unambiguously ambiguous.

In reality, the scientific record is unambiguously ambiguous.

This is best understood by considering the views of the Clean Air Science Advisory Committee (CASAC), an independent science advisory board Congress created to advise the EPA on revisions to the national air quality standards — the central focus of this debate. The Clean Air Act requires the EPA to review — but not necessarily to change — each national ambient air quality standard every five years. During the review of both the ozone and particulate matter standards, CASAC spent many hours considering the available science and debating what conclusions, if any, could be drawn from that science.

On ozone, the panel urged the EPA to change the measuring and sampling techniques. But the

panel reached no definitive conclusions on the stringency of a new standard. It stated that there was no "bright line" that distinguished any of the levels under consideration and called the final decision a "policy call" rather than a scientific judgment. Indeed, it was anything but science dictating Browner's selection of the stringent standard she chose. In fact, the EPA could have selected a less stringent option and still satisfied the recommendations of CASAC on ozone.

...the EPA may not be interested in enforcing its rules, but that will not stop special interest groups from filing lawsuits and forcing compliance with these burdensome regulations.

On particulate matter, CASAC supported the development of a fine particle (less than 2.5 microns) standard, but provided no recommendation for any specifics, such as the stringency of the standard, how it is measured, or what form any new standard should take. Individual scientific views were all over the map on these key issues. Once again, the EPA could have set a fine particle standard that was equivalent to — or even less stringent than — the existing standard and still have met the recommendations of CASAC.

In short, the CASAC scientists were unable to reach a consensus on the need for new standards, yet Carol Browner stepped in and made calls the scientists wouldn't. As a result, the new standards do not reflect the inescapable result of the available science. They are, instead, a judgment call on the part of the administrator — a call made despite grave concerns expressed by other Clinton administration officials.

For instance, concerned about the economic impact of the new standards, the Assistant Secretary of Transportation wrote the Office of Management and Budget, concluding:

> "The social and economic disruption that the proposed changes will cause are not understood. The costs associated with the standards changes, both in terms of cost of compliance as well as economic impacts, will likely be large...[It] is critical that the Administration understand the implications associated with such costs up front."

Additionally, the head of the Small Business Administration sent a letter to Carol Browner noting that:

> [Regarding the EPA's conclusion that the proposed rules will not have a significant economic impact on small entities] "Considering the large economic impacts suggested by the EPA's own analysis that will unquestionably fall on tens of thousands, if not hundreds of thousands of small businesses, this would be a startling proposition to the small business community."

> "... EPA's own draft November 3 analysis (admittedly very approximate) reveals shockingly high impacts...Furthermore, these costs

> are in addition to the costs required by the current standards. *Thus, this regulation is certainly one of the most expensive regulations, if not the most expensive regulation faced by small business in ten or more years.*" (emphasis in original)

Clearly, the EPA's judgment call – again, not based on a scientifically identified need — threatens to be a costly one.

The Economics of the Environment

According to documents recently released by the EPA, more than 600 counties across the nation will face the stigma of a "non-attainment" designation under the new ozone and particulate matter standards. These counties will be considered out of compliance with the new standards and will be required to take significant and costly steps to come into compliance.

The EPA plans to force states to meet the new levels through a wide variety of measures, including costly capital improvements like scrubbers and additional pollution control measures to inconveniences like mandatory car pooling. For large manufacturers, this will lead to a costly addition to the price of business. Job growth and expansion will be sacrificed as regulations will lead to increased costs for customers, wholesalers, and the general public. For small, privately owned businesses, the effects could be devastating, with the costs of compliance possibly driving some out of business.

These regulations will be a major consideration for start-up businesses or those established firms considering new growth or a move. Communities competing to welcome a new factory or facility will be seriously handicapped if they are in non-attainment status.

The EPA has promised a host of implementation fixes designed to "avoid burdensome new local planning requirements and restrictions on economic growth" that otherwise would be in store for these areas. For ozone, the main thrust involves state implementation of an EPA-designed utility strategy as the key to qualify for delays and leniency in the implementation of the new standard.

The irony here is that it is far more likely that changing standards will actually delay progress on clean air for the next five years.

For particulate matter, the EPA flatly asserts that the only implementation that will occur during the next five years is further health-effects research and atmospheric monitoring to determine fine particle levels.

This may well be satisfactory, but only until the first lawsuit is filed. The Clean Air Act is a detailed and prescriptive statute. It requires the EPA to designate non-attainment areas within two years of the promulgation of a new standard. Once designated, the Act sets forth a series of requirements and milestones that must be met. A potent citizen suit clause buttresses these requirements by transforming any environmental or health group with an attorney into a potential enforcer of the Act's non-attainment provisions. Thus, the EPA may not be interested in enforcing its rules, but that will not stop special interest groups from filing lawsuits and forcing compliance with these burdensome regulations.

Too Much of a Good Thing? Disrupting Efforts That Are Working

Carol Browner has repeatedly stated that the nation is making progress in its fight for cleaner air under the Clean Air Act and will continue to do so during the next five years with or without new standards. So why is the EPA fixing something that isn't broken? The irony here is that it is far more likely that changing the standards will actually delay progress on clean air for the next five years.

The potent ozone provisions of the Clean Air Act Amendments of 1990 are tied to the existing ozone standard. The agency's original legal judgment was that these provisions would be lost with the change to the new ozone standard and that the new standards would, in effect, "reset the clock." The result would be that areas which would have been required to be in compliance during the next several years under the 1990 amendments will have a far longer period to meet the new standards.

The EPA recently reversed itself and argued that it could save the existing program by layering the new standard right on top of the existing standard. The reality, however, is that most existing ozone requirements and deadlines are tied to the existing ozone standard, and the probability is great that progress will slip once the new standard is implemented.

A further factor compounding this problem is with the very nature of air pollution — the movement of air carries with it the polluting material. The pollution from a factory may be felt hundreds of miles downwind from the polluter. In many areas of the country, interstate transport of ozone and its precursors is a problem that must be addressed. These regulations don't address the transport problems and, in fact, could even make them worse.

One Battle in a Bigger War

In light of the EPA's insistence — despite the lack of scientific necessity — on promoting these new regulations, Congress is debating various responses. One bill put forth would place a four-year moratorium on changes to the ozone and particulate matter standards while the EPA re-evaluates the standards, hopefully developing a consensus scientific opinion.

Consistent with the Clean Air Act requirement that the standards be reviewed every five years, the EPA would be free at the end of the four-year re-evaluation period to again propose new standards. The bill has been designed to ensure that the clean air progress our nation has been making will continue during this period.

The economics of the environment is the economics of our families, our jobs, and our future.

For ozone, that means the continued implementation of the Clean Air Act Amendments of 1990. For particulate matter, it means continued research on health effects and atmospheric monitoring, the only two activities the EPA plans to do during the next five years. Since the plan would allow these activities to go forward, it does not slow down the control of ozone and particulate matter by a single day. It does allow the EPA the opportunity to build a scientific consensus for changes, if any are indeed needed, to the ozone and particulate matter standards.

The economics of the environment is the eco-

nomics of our families, our jobs, and our future. The regulatory structure established in the country has become so intertwined that any family whose breadwinner works anywhere near the manufacturing, processing, industrial, or transportation sectors of our economy is touched by rule changes. And for those not directly touched, any of these changes send ripple effects throughout our economy.

We have seen that there is room for a clean environment and a healthy economy to coexist. When given the flexibility to respond to local needs, small business and local governments have succeeded countless times. This is the attitude which lawmakers and policy makers must adopt.

Even the EPA has shown it has the ability to advance reasonable policies for economic development. Its brownfield redevelopment pilot project is already helping to get polluted lands back in business. This cooperation with local government and employers has proved successful. EPA clearly has the skills necessary to advance policies which have proven effective and helpful. And, yet, efforts to tighten the EPA's particulate and ozone standards continue despite overwhelming evidence that these regulations are neither necessary nor wise.

Rep. Fred Upton of Michigan was first elected to the House in 1986. He is the co-author, with Rep. Ron Klink (D-PA) and Rep. Rick Boucher (D-VA), of H.R. 1984, legislation that would establish a four year moratorium on changes to ozone and particulate matter standards established under the Clean Air Act.

The
American Sound

The American Sound is a project of Rep. John Boehner of Ohio and Rep. James Talent of Missouri. Its purpose is to propose, promote, and defend innovative and principled solutions to the long-term challenges facing the country, while relying and focusing on traditional American values: freedom, responsibility, faith, opportunity.

John Boehner

John A. Boehner *("Bay-ner")*, elected to represent the 8th Congressional District of Ohio for a fourth term in 1996, has made it his mission to reform Congress and to make the federal government smaller, more effective, and more accountable to the people it serves.

John's first two terms were marked by an aggressive campaign to clean up the House of Representatives and make it more accountable to the American people. In his freshman year, he and fellow members of the reform organization known as the "Gang of Seven" took on the liberal House establishment and successfully closed the House Bank, uncovered "dine-and-dash" practices at the House Restaurant and exposed drug sales and cozy cash-for-stamps deals at the House Post Office.

John was instrumental in the origin, execution, and successful completion of the House Republicans' *Contract with America* — the bold 100-day agenda for the 104th Congress which nationalized the 1994 elections.

Boehner also serves as Chairman of the House Republican Conference, the fourth highest post in the House Republican leadership.

Born in 1949, John is one of 12 brothers and sisters and a lifelong resident of southwest Ohio. After college, Boehner accepted a job with a struggling sales business in the packaging and plastics industry which he eventually took over and built into a successful enterprise. His gradual foray into politics grew out of that business experience, where he witnessed first-hand big government's increasing chokehold on American business.

John is married to the former Debbie Gunlack and has two daughters, Lindsay and Tricia. They reside in West Chester, Ohio.

James Talent

James M. Talent, 41, is a third-term Republican representing the second district of Missouri. He has a history of fighting for legislation that combats bloated federal bureaucracy and returns power and resources back to the people. He has been a strong proponent of the balanced budget, middle-class tax relief, and term limits for Congress.

Talent has also been a leader in developing sound social policy. In 1994, he introduced the Real Welfare Reform Act, which later became the basis for the welfare bill that was signed into law in 1996. He is also the co-author of the American Community Renewal Act, a bill designed to foster moral and economic renewal in our nation's low-income communities.

Concerned with the readiness and resources of our nation's military, Talent formed an Ad Hoc Committee to the National Security Committee called the Hollow Forces Update Committee in the 103rd Congress. The Committee served to keep Congress appraised of the dangerous effects of President Clinton's defense budget cuts.

Talent is currently the Chairman of the House Small Business Committee. Additionally, Talent has served in numerous leadership capacities, including being named Freshman and Sophomore Class Whip for the 103rd and 104th Congresses. Last Congress, Talent was named Deputy Regional Whip by Majority Whip Tom DeLay and was appointed by the Speaker to co-chair the Task Force on Empowerment and Race Relations and serve on the Republican Task Force on Welfare Reform.

Talent and his wife, Brenda, were married in 1984. They have three children: Michael, Kate, and Christine.